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Security Council

Sixty-seventh year

Provisional

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Tuesday, 5 June 2012, 10 a.m.
New York

President:	Mr. Li Baodong	(China)
Members:	Azerbaijan	Mr. Mehdiyev
	Colombia	Mr. Osorio
	France	Mr. Briens
	Germany	Mr. Wittig
	Guatemala	Mr. Rosenthal
	India	Mr. Hardeep Singh Puri
	Morocco	Mr. Bouchaara
	Pakistan	Mr. Tarar
	Portugal	Mr. Cabral
	Russian Federation	Mr. Karev
	South Africa	Mr. Mashabane
	Togo	Mr. Menan
	United Kingdom of Great Britain and Northern Ireland	Mr. McKell
	United States of America	Mr. DeLaurentis

Agenda

Reports of the Secretary-General on the Sudan

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The meeting was called to order at 10.10 a.m.

Expression of thanks to the outgoing President

The President (*spoke in Chinese*): As this is the first meeting of the Council for the month of June 2012, I should like to take this opportunity to pay tribute, on behalf of the Council, to His Excellency Ambassador Agshin Mehdiyev, Permanent Representative of Azerbaijan, for his service as President of the Security Council for the month of May 2012. I am sure I speak for all members of the Council in expressing deep appreciation to Ambassador Mehdiyev and his delegation for the great diplomatic skill with which they conducted the Council's business last month.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

The President (*spoke in Chinese*): Under rule 37 of the Council's provisional rules of procedure, I invite the representative of the Sudan to participate in this meeting.

Under rule 39 of the Council's provisional rules of procedure, I invite Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, to participate in this meeting.

The Security Council will now begin its consideration of the item on its agenda.

I now give the floor to Mr. Moreno-Ocampo.

Mr. Moreno-Ocampo: As former Costa Rican Minister for Foreign Affairs Bruno Stagno Ugarte stated in the Security Council in 2008, the "never again" promise is being tested in the Sudan (see S/PV.5905).

With resolution 1593 (2005), the Council took the initiative to refer a situation involving ongoing atrocities to a permanent, existing court. That was a conscious decision, namely, that a judicial investigation of the facts and the identification of those responsible should not wait for the end of the conflict. In fact, the ability of the Court to implement its mandate immediately was a crucial factor mentioned by members of the Council in adopting that resolution.

Investigating Darfur was an enormous challenge for the Court. There were serious allegations of thousands of crimes committed in a vast territory by different parties. The Office of the Prosecutor conducted an impartial investigation, receiving documents collected by the United Nations Commission of Inquiry, as well as reports from the Government of the Sudan itself, which even authorized us to interview a general as a suspect in Khartoum. To respect its duty to protect witnesses, my Office has had to investigate the crim[illegible]vithout visiting the crime scene. Members of the Office of the Prosecutor have travelled around the world collecting hundreds of testimonies of victims and eyewitnesses who had escaped from the Sudan. Most of our evidence is confidential so as to protect the lives of the witnesses and their relatives.

During the previous briefing (see S/PV.6688), the Sudan challenged the value of the evidence. My Office is prepared to discuss the matter in the courtroom, at The Hague, or before the judges. That is where we discuss evidence.

Ten judges, members of the Pre-Trial and Appeals Chambers, discussed the value of the evidence collected by the Office of the Prosecutor. They concluded that the forces of the Government of the Sudan had committed war crimes and crimes against humanity in Darfur following a strategy adopted in the higher echelons of the State apparatus. The Pre-Trial Chamber identified the individuals who would have to face justice and issued arrests warrants against a militia/Janjaweed leader, Ali Kushayb, who reported to the then Minister of State for the Interior, Ahmed Harun, who in turn reported to the then Minister of the Interior, Abdelrahim Mohamed Hussein, who ultimately reported to President Al-Bashir. I would like to clarify that the responsibility of those individuals is not a simple consequence of their official roles. In all the cases, the Office collected information and there are witnesses that describe in detail their active participation in the strategy to commit crimes — in the gathering of forces, in the financing, in actually committing the attacks, in supervising operations and in protecting the attackers.

The charges against President Al-Bashir include the crime of genocide. The Pre-Trial Chamber concluded that Omar Al-Bashir acted with specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups. In all of those cases the Pre-Trial Chamber considered that arrests were necessary in order to stop the commission of crimes.

The Court fulfilled its judicial mandate. The evidence collected uncovered the functioning of a State apparatus used to commit genocide, crimes against

humanity and war crimes. Those who bear the greatest responsibility have been indicted. The current challenge is their arrest.

In accordance with resolution 1593 (2005), the Government of the Sudan has the legal obligation to implement the arrest warrants. However, President Al-Bashir is taking advantage of his position of power to continue with his strategy and to ensure his own impunity and that of those who follow his instructions. There is no information to believe that the crimes against humanity and genocide have stopped.

The report is clear that President Al-Bashir's strategy includes, first, threats to the international community to commit new crimes in other areas of the Sudan.

The second element includes the denial of those same crimes and of the rapes in the villages and in the camps, attributing the killings to banditry and sporadic clashes between rebel groups or reducing their relevance through statistical comparisons and attributing conditions in the camps to different factors, such as drought, lack of proper seeds or inability to access farm land.

The third factor I would like to mention in the strategy of President Al-Bashir is the forcing of the international community into a never-ending negotiation in order to gain access to displaced victims.

The fourth factor is the permanent promise of peace negotiations. The international community chases promises of peace agreements that are systematically ignored while President Al-Bashir's force commits more attacks and creates the conditions for new promises of peace agreements.

The fifth aspect is the announcement of justice initiatives that are followed only by new announcements, not by action. After more than seven years of instituting judicial mechanisms, the Government of the Sudan has conducted no proceedings relevant to the crimes committed in Darfur.

The sixth element entails open defiance of the authority of the Security Council, including through public announcements that Council resolutions will not be implemented.

The Council is well aware of this situation. Recently, on 17 February, resolution 2035 (2012) was adopted, demanding an end to military action, including aerial bombardments, and an end to sexual violence and indiscriminate attacks on civilians. The resolution also expressed concerns about obstacles deliberately placed in the way of the work of the Panel of Experts and that of the United Nations Mission in Darfur (UNAMID). The resolution also called for the Government of the Sudan to undertake effective efforts to ensure accountability for serious violations of international law and to ensure unrestricted humanitarian access. A few months ago, the Council also expressed regret that some individuals affiliated with the Government of the Sudan and armed groups in Darfur had continued to commit violence against civilians, impede the peace process and disregard the demands of the Council.

The situation is therefore clear. Implementing the arrest warrant issued by the Court will produce a dramatic change in Darfur. Interestingly, in a normal criminal case, it is difficult to locate the fugitives; in this case it is easy. The whereabouts of the four fugitives in Darfur cases are known. Ali Kushayb remains in Darfur, Ahmad Harun can be found in the Governor's residence in Southern Kordofan, Abdelrahim Mohamed Hussein sits in his office at the Ministry of Defence in Khartoum, and Al-Bashir can be found in the Presidential Palace in Khartoum. The next phase in these Darfur cases is to arrest those indicted.

The failure to arrest and surrender Mr. Harun, Mr. Kushayb, Mr. Hussein and President Al-Bashir is a direct challenge to the Council's authority. It is for the Council to determine the measures to be adopted to ensure the compliance of the Government of the Sudan with Security Council resolutions. The reality is that Council members have to reconcile their national interests with their responsibilities for peace and security. I have witnessed where they have done so. I have witnessed the impact of the Security Council acting with consensus. My Office would like to contribute by presenting an option that the Council could explore in due time.

The execution of the arrest warrants on Sudanese territory is the primary responsibility of the Government of the Sudan. UNAMID should not be authorized to carry out, or assist in securing, arrests. Instead, the Council can in due course evaluate other possibilities, including asking United Nations States Members or regional organizations to execute arrest operations in furtherance of the arrest warrants issued by the International Criminal Court. I understand that such decisions would be problematic, but the victims will receive a message, namely, that they are not being ignored. The perpetrators

will receive a different, clear message, that is, that there will be no impunity.

The President (*spoke in Chinese*): I thank Prosecutor Moreno-Ocampo for his briefing.

I now give the floor to the representative of the Sudan.

Mr. Osman (Sudan) (*spoke in Arabic*): I would first like to extend my thanks to your predecessor, Mr. President, the Permanent Representative of Azerbaijan, and to congratulate him on his exemplary conduct of the work of the Council last month. I would also like to congratulate you, Sir, on your assumption of the presidency for this month. We are confident that, with your well-known expertise, you will conduct the work of the Council in all impartiality and justice.

I should like to begin by putting on record the fact that our participation in this meeting does not in any way indicate recognition of or interaction with the International Criminal Court (ICC). The Sudan is not party to the Court. We would like to reiterate that we are compelled to participate in order to correct the fallacious information included in the fifteenth report of the Office of the Prosecutor, information also included in his previous reports. That is the sole reason for our participation.

Establishing a link between a judicial entity and a political entity, as is the case between the Security Council and the International Criminal Court, is not a step that serves to ensure justice, and perhaps I should not speak at length on this issue. Legal experts have always spoken of the independence of the judiciary, in particular from political powers. That is a fact that any first-year law student would know. Also, the contractual relationship between the Security Council and the Court should be confined to the parties to the Rome Statute only. I do not need to remind those who represent the Court of the Vienna Convention on the Law of Treaties, which is a cornerstone of international law. A State that is not a party to a convention does not have obligations under it.

I would like to add that the Council's referral of the conflict in Darfur to the Court through resolution 1593 (2005), calling it a threat to international peace and security, was not based on any sound logic, since it is an internal conflict not reaching outside the borders of the Sudan. It is therefore not a threat even to regional peace and security, to say nothing of international peace and security. The whole issue is therefore based on merely political motives and is being implemented by individuals within the Court who are serving the political agendas of certain States.

The Court is not one of the entities established by the United Nations Charter. Consequently, it is not a judicial arm of the United Nations. It is a court of the States parties to the Rome Statute. As I have said, the Sudan is not a party to that Statute, which founded the Court. In the same way, eight members of the Council, primarily among the non-permanent members, are not parties to the Statute.

I would like to shed some light on what is for us the most important issue regarding the International Criminal Court, namely, the behaviour of the Prosecutor. In that context, I would like to quote, for a second time (see S/PV.6688), the words of Condoleezza Rice, former Secretary of State of the United States of America, on this subject.

(*spoke in English*)

> "We opposed the ICC on the grounds, among others, that its prosecutor is not accountable to any Government. For us this was an issue of sovereignty and a step that looks a bit too much like 'world government'." (No Higher Honor: A Memoir of My Years in Washington, p. 188.)

(*spoke in Arabic*)

What we heard only moments ago from the Prosecutor reaffirms Ms. Rice's words. He speaks as if he were president of the world, issuing his instructions to the Security Council and suggesting options about which he will speak at a later time. Even a cursory evaluation of Ms. Rice's words about the Prosecutor shows her to be correct, because it has been proved that in practice there is no system providing accountability on the part of the Prosecutor, leading him to stray from legitimacy and legal professionalism. All the claims he has levelled — based on political motives — that what happened in Darfur was ethnic cleansing have been refuted by testimony from prominent international figures, who have denied that the crime of ethnic cleansing took place in Darfur.

In the most recent Council meeting on this subject I outlined that testimony in detail (see S/PV.6688). However, for the record, since the Prosecutor is repeating the same claims, I too would like to repeat some of those who have refuted those claims. Among them is

the late Judge Antonio Cassisi, expert on international law and head of the International Commission of Inquiry on Darfur, who denied the commission of the crime of ethnic cleansing. Compare that denial by such a prominent legal expert with the statements made by people on the Court who are just beginning their careers and learning the basics of the law.

Also among those refuting the claims are Dr. Mercedes Taty and Dr. Jean-Hervé Bradol of Médecins sans frontières — neither of whom is from the Sudan, or Africa or Asia — who worked in Darfur for over 10 years. They stated that ethnic cleansing was not committed in Darfur. The former United States Special Envoy for Peace in Darfur, Mr. John Danforth, said that the repeated claims that ethnic cleansing had been committed in Darfur were nothing but an excuse for United States interference in the internal affairs of the Sudan. He, too, is neither Sudanese nor African. He commands credibility, and his statement will be remembered by history and the whole of humankind. The official spokesperson of the European Union fact-finding mission — a European — has also denied the commission of ethnic cleansing in Darfur.

All of those statements are documented. In addition to them, former Nigerian President Obasanjo and the former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, have also stated that ethnic cleansing was not committed in Darfur. I leave it to the wisdom of the members of the Council to compare the testimony of such prominent figures with false claims driven by political and personal motives.

Further proof of the Prosecutor's lack of credibility is that a reader of his report would feel that he is speaking of a Darfur other than the one that is currently enjoying stability and security. We now see a Darfur in which the Sudan has gone a long way towards implementing the Doha Document for Peace, a Darfur in which the authorities have begun to carry out their duties in accordance with that agreement.

The report before the Council reiterates erroneous information whose value has been superseded by events on the ground in Darfur. For example, I would like to mention here what the report calls the lack of national judicial measures. That is incorrect. The Doha Document for Peace, which includes straightforward provisions on justice and reconciliation, is the best evidence of the Sudan's commitment to implementing the national judicial measures required to investigate the crimes perpetrated in Darfur. The Doha Document even stipulates, in paragraph 295, that

> "immunities enjoyed by persons by virtue of their official status or functions shall not obstruct the speedy dispensation of justice nor shall they prevent the combating of impunity."

That provision is in addition to other commitments set forth in the Doha Document designed to bring about justice and reconciliation as the two main vectors for the establishment of peace in Darfur.

Those mechanisms have begun to work in the general context of launching the work of the Transitional Darfur Regional Authority headed by Mr. Tijani el-Sissi, who represents the coalition of 11 factions that had previously engaged in armed struggle against the Government. They have all been involved in running Darfur; the leaders in Darfur are thus sons of Darfur. They have been involved in the work of reconstruction and in the return of the displaced.

In the light of all those positive tangible developments on the ground, it is now necessary for those who speak of Darfur to call upon the international community to assist in completing the march towards peace and not to throw more fuel on the fire, cause instability or intimidate the inhabitants of the region.

The Doha Document also addresses other issues related to Darfur, laying out a road map for their solution. The cessation of violence and the return of the displaced, the establishment of stability and peace and the resumption of reconstruction are all results of the Doha Document. In that regard, I would like to quote Mr. Dan Smith, the United States envoy for Darfur, who visited Darfur a few days ago. He actually goes to Darfur almost every month. He said,

(*spoke in English*)

> "Darfur is quite a different place from 2003 [when] 18 per cent of the population lived in urban areas. Now about 50 per cent of the population is living in urban areas."

(*spoke in Arabic*)

When we present such facts and quote the United States envoy, who visits Darfur monthly, who has greater credibility? Is it the person I have just quoted or the person who has never visited Darfur? Who has more credibility in this case?

The positive developments in Darfur were recognized in a recently completed review undertaken by the African Union-United Nations Hybrid Operation in Darfur (UNAMID), which concluded that the military units should be reduced, leading to a savings of $79.9 million in the 2012-2013 budget.

In view of everything to which I have referred, would it not have been better for the Prosecutor to take the right and optimistic path that is strewn with positive developments, instead of dwelling on the past, inciting the Security Council to take action against the Government of the Sudan and beating the drums of war and interference, which would only lead to further instability? Law can never be established except where there is stability and security, not war.

The Prosecutor has today devised a new approach through which he attempts to instigate the Council to take action the Government of the Sudan. In his arguments, he relies on the Council's resolutions on the conflict in Darfur. In that regard, two other United Nations bodies charged with the implementation of those resolutions, the foremost of which, the Department of Peacekeeping Operations (DPKO), has not presented to the Council such flagrantly provocative reports. The Council has before it the two latest reports of the Secretary-General on the situation in Darfur and the implementation of the UNAMID mandate, which speak of the reduction of violence and the drop in crime rates.

The Prosecutor, in mentioning what he calls the lack of cooperation by the Government of the Sudan and its non-compliance with Security Council resolutions, has deliberately ignored the United Nations Charter and its provisions for the respect of the legitimacy of States and their sovereignty. He has also ignored the provisions of the Vienna Convention, as I mentioned earlier, which hold that any State that is not party to a convention is not bound by it.

If the Prosecutor wishes to speak of law, he should really speak of the law. But if he is speaking of politics and not of law, or if he has other motives, then that is another story. Why does the Prosecutor continue to confuse the issues and incite the Security Council to take action against the Government of the Sudan, which has been able to turn the page of war in Darfur and devote all its potential and resources to developing that region and to rebuild it and restore peaceful coexistence among the different tribes that live there.

We condemn and denounce in the strongest terms the recommendations of the Prosecutor asking the Security Council to take other legal measures to implement what he calls arrest warrants, as well as his incitement of the Council to call on States Members of this Organization and regional organizations to do the same.

We would recall that the President of the Republic, Omer Hassan Ahmed Al-Bashir, was elected by the Sudanese people in elections whose free and democratic nature was recognized by the United Nations, regional organizations, European observers and the Carter Centre. We would recall also that other Sudanese leaders accused by the Prosecutor are members of an elected Government and that the people of the Sudan will therefore not think twice about defending the sovereignty of their country and the symbols of its dignity and independence.

We would also remind the Prosecutor that threatening to interfere in the affairs of States by force will not break the determination of free people, and that contemporary African history offers ample testimony to that effect. We would like also to draw the attention of the new Prosecutor of the Court to the serious and dangerous nature of her predecessor's approach.

I reiterate that the Government of the Sudan will continue to cooperate with the Council and with the mediators, particularly the brotherly country of Qatar, in the continuing efforts to establish fully the peace and stability process in Darfur, taking into account the fact that peace is a necessary foundation for stability and justice, and recognizing the importance of ensuring justice, reaching settlements and providing compensation in accordance with the stipulations of the Doha Document for Peace in Darfur.

I should like to conclude by saying that the people of Darfur are dear to the hearts of the people of the Sudan and that the Government of the Sudan is more concerned than anyone else with realizing their aspirations, tending to their wounds and easing their bitterness. We hope that the Council will give precedence to the voice of wisdom and logic and act on the basis of the key principles upon which the United Nations was founded — to bring about justice and to assist States in their efforts to bring about peace and security.

I appeal to the Council to bring pressure to bear, and even to take punitive measures, against the rebel armed movements in Darfur that have refused to listen to reason or sit at the negotiating table. That should be

the substance of our efforts: to continue on the path that we have chosen and to sit with those who have rejected peace and negotiate with them, with a view to turning a new page instead of opting for the culture of war and conflict, which does not lead to peace, justice or stability.

I call on the Council to disregard calls for measures that do not serve to bring about stability and peace, which is the main objective of the United Nations. I am confident that it will do so.

The President (*spoke in Chinese*): I shall now give the floor to the members of the Council.

Mr. McKell (United Kingdom): I thank Mr. Moreno-Ocampo for his report, for setting out the action that the International Criminal Court (ICC) has taken over the past seven years on Darfur and for briefing us on the latest developments in the work of the Court on this matter. The United Kingdom continues to support that work and, as his time in office comes to an end, I commend the Prosecutor and his team for their efforts in pursuit of justice for the victims of this conflict.

The last six months have not seen as much progress in Darfur as we had hoped. The inauguration of the Darfur Regional Authority in February was an important step towards the implementation of the Doha Document for Peace in Darfur, as was the establishment of the Truth, Justice and Reconciliation Commission, the Darfur Land Commission and the National Human Rights Commission. We welcome those developments. Implementation, however, has not progressed as planned, and those authorities are not yet functioning institutions. The people of Darfur have yet to see tangible improvements to their lives as a result.

We once again look to the Government of the Sudan to demonstrate its commitment to the Doha Document. We hope that the high presidential committee will expedite its implementation. We urge the Government to deliver its funding commitments to the Darfur Regional Authority, allowing it to establish well-structured and well-resourced institutions, delivering for the people of Darfur before they lose hope in the Doha Document.

We urge those movements that have not signed the Doha Document to support its implementation and to engage constructively in the peace process. We hope that all Darfuris will engage in an internal dialogue, and, as set out in the African Union-United Nations framework for facilitation of the Darfur peace process, will themselves determine the nature of those consultations.

Those developments, however, are marred by the continuing reports of violence in Darfur. The human rights situation is deteriorating, with continuing reports of violence against women and children, often of a sexual or gender-based nature. Ground attacks targeting civilians, humanitarian workers and peacekeepers continue. In the past year, 10 peacekeepers have died and 20 injured in nine attacks against the African Union-United Nations Hybrid Operation in Darfur (UNAMID). That is outrageous and must be condemned. It is unacceptable that UNAMID continues to be prevented from accessing and investigating such attacks. The Government and the armed movements must stop preventing access by humanitarian agencies to those most in need of assistance.

Given these ongoing and deeply concerning issues, the continuing jurisdiction of the Court in Darfur is all the more relevant, and the Prosecutor's continued efforts to monitor and investigate allegations are vital.

The arrest warrant issued against the Sudanese Defence Minister, Abdelrahim Hussein, for crimes against humanity and war crimes means that there are now four outstanding arrests that the Government of the Sudan has failed to take action to enforce. Instead, it continues to obstruct the pursuit of justice for the people of Darfur. The Government of the Sudan is bound to comply with the obligation laid down by the Council in resolution 1593 (2005) to cooperate fully with the ICC and its investigations. No citing of the Vienna Convention on the Law of Treaties or quotations from other people alter that fact. It remains their obligation.

The United Kingdom has repeatedly asked the Government of the Sudan to comply with that obligation, and we repeat that call today. Indeed, we call on all States to cooperate with the ICC to end impunity.

In conclusion, we want once again to thank Mr. Moreno-Ocampo for his efforts to achieve justice for the victims of this conflict over the past seven years and, indeed, to thank him for all his efforts to end impunity while in the Office of the Prosecutor at the International Criminal Court.

Mr. Bouchaara (Morocco) (*spoke in French*): Allow me, first of all, to join my colleagues in thanking the representative of Azerbaijan for the outstanding work carried out in the month of May, as well as to

congratulate you, Sir, on assuming the presidency of the Security Council. We wish you every success in carrying out your duties. I would also like to welcome Mr. Moreno-Ocampo and to congratulate Ms. Fatou Bensouda. Her election to the post of Prosecutor of the International Criminal Court (ICC) was welcomed with great pride across our continent.

Morocco supports a political solution among all the parties involved in order to reduce the suffering of civilians. We reiterate our commitment to respecting the principles of international humanitarian law and human rights. We also reiterate our commitment to respecting the sovereignty and territorial integrity of the Sudan.

Since the adoption of resolution 1593 (2005), the ICC has regularly provided the Council with reports on the implementation of that resolution. The fifteenth report submitted by the ICC enumerates the main actions undertaken by the Court since resolution 1593 (2005) was adopted, on 31 March 2005, and evaluates its actions.

Today we can affirm that the situation in Darfur is developing and that significant efforts have been made to resolve the conflict. That progress must be encouraged and supported.

Morocco welcomed the signing of the Doha Document for Peace in Darfur and the launching of the implementation of the provisions contained therein. That ambitious agreement tackles all of the issues that gave rise to the conflict, such as measures for an equitable redistribution of power and resources, compensation, the return of displaced persons, reconciliation and the maintenance of dialogue.

The failure of several rebel movements to subscribe to the agreement and the resulting instability make its implementation difficult. In addition, the main structure arising from the agreement, namely, the Darfur Regional Authority, has been established. However, the lack of funds available to it currently prevents it from becoming operational.

The Sudan is an ancient African nation that, with the richness of its history, culture and civilization, has contributed to the history of the entire African continent. The history of the Sudan did not begin with the conflict that has ravaged the country; its history goes back centuries and is intimately linked to the history of the continent.

The Sudan has made important sacrifices for the Comprehensive Peace Agreement and the Doha Document for Peace in Darfur. The decision of the ICC to indict President Al-Bashir is not based on international consensus. The Organization of Islamic Cooperation and the Non-Aligned Movement have called into question such an approach. The cooperation of States not parties to the Rome Statute is also a complex issue in many respects.

The League of Arab States clearly expressed its position with regard to the indictment of President Al-Bashir only a few days after the decision of the ICC, at its twenty-first Summit, held in Doha in March 2009. The League of Arab States has since then reiterated its position several times.

We believe that the long process that will enable a return to peace and stability in Darfur cannot be achieved without effective and coordinated cooperation on the part of all those involved, regional organizations and the mediation mechanisms involved.

Mr. DeLaurentis (United States of America): Let me start by thanking the Prosecutor of the International Criminal Court (ICC), Mr. Luis Moreno-Ocampo, for his informative briefing today on the situation in Darfur, as well as for his contributions over the past nine years to the cause of ending impunity for the most serious crimes of concern to the international community.

The United States is gravely concerned about the situation in the Sudan and the role that continuing impunity for crimes committed in Darfur has played in forestalling a just and enduring peace for the people of the Sudan and the region.

This is the Prosecutor's fifteenth and final report to the Security Council on the situation in Darfur, which the Council referred to the ICC in 2005. He has come before us many times to describe the work of his Office in seeking to address the atrocities suffered by the victims of genocide, war crimes and crimes against humanity in Darfur.

Indeed, since the adoption of resolution 1593 (2005) and the initiation of these periodic reports, copious evidence has been collected and arrest warrants sought and granted. The most recent development has been the arrest warrant for Minister of Defence Abdelrahim Mohamed Hussein. Most important, promises have been made to the victims that the crimes they suffered will

not go unpunished and the justice they seek will not go undelivered.

But as of today, justice has not been served. The ICC's prosecution of the key architects of the atrocities in Darfur is critical. But, as the Prosecutor has stressed, the individuals subject to the ICC arrest warrants in Darfur continue to remain at large.

We have consistently called on the Government of the Sudan and all parties to the conflict to cooperate fully with the ICC and its Prosecutor. Yet there is persistent failure to meet obligations under resolution 1593 (2005). Local accountability initiatives, particularly those agreed to in the Doha Document for Peace in Darfur, remain largely unfulfilled, and the violence continues in Darfur and in other areas of the Sudan, where these patterns repeat themselves and similarly go unaddressed.

Today's report offers us an opportunity to reflect on what steps we can take to strengthen international efforts to hold accountable those who have committed atrocities in Darfur. We agree with the Prosecutor that the lack of progress to date in executing the arrest warrants and bringing those most responsible to justice merits renewed attention by the Council.

We think it is a serious cause for concern that the individuals subject to outstanding arrest warrants in the Darfur situation remain at large and continue to travel across borders. This is an area where cooperation is particularly crucial.

To that end, we continue to urge all States to refrain from providing political or financial support to the Sudanese suspects subject to ICC arrest warrants and to bring diplomatic pressure to bear on States that invite or host these individuals. We stand with the many States that refuse to welcome the ICC indictees to their countries, and we commend those that have spoken out against President Al-Bashir's continued travel, including to next month's African Union Summit.

For our part, the United States has continued to oppose invitations, facilitation or support for travel by those subject to ICC arrest warrants in Darfur and to urge other States to do the same. We would welcome additional efforts by, and better coordination with, other members of the international community on these issues.

We encourage the Council to consider creative approaches and new tools. As members of the Security Council, we can and should review additional steps that could be taken to carry out the ICC's work in Darfur, execute outstanding arrest warrants and ensure States' compliance with relevant international obligations. Continued impunity and a lack of accountability for heinous crimes fuel resentment, reprisals and conflict in Darfur.

We are deeply troubled by the increased violence in three of the five Darfur states since the Prosecutor's last briefing in December (see S/PV.6688). Once again, we note that the Sudanese Government continues its use of aerial bombardments, including of civilian areas, in violation of resolutions issued by the Council. We are also deeply concerned about sexual and gender-based violent crimes there.

We are also deeply troubled that impunity continues for those who attack peacekeepers from the African Union-United Nations Hybrid Operation in Darfur (UNAMID). Since the Prosecutor's last report, UNAMID has been attacked four times, and three peacekeepers have been killed in those attacks. We reiterate our calls on the Government of the Sudan to investigate the attacks and bring those responsible to justice. We note the progress made in the two cases ongoing against Darfur rebels, as described in the Prosecutor's report.

We are extremely concerned about the recurring violence in Southern Kordofan and Blue Nile states. Unfortunately, we have seen concrete illustrations in those two areas that those who evade accountability all too often contribute to further cycles of violence. As the Prosecutor has reminded us, Ahmed Harun is the subject of an outstanding arrest warrant for alleged crimes committed in Darfur. Yet, rather than facing justice, he has been entrusted by the Government of the Sudan with the duty of serving as Governor of Southern Kordofan, where he engages in inflammatory rhetoric reminiscent of the kind he employed in Darfur, pursuing policies that in recent weeks have led to the displacement of nearly 700 people per day, while continuing to block humanitarian access to those remaining. We will continue to push for a credible, independent investigation into violations of international law there and to demand that those responsible be held to account.

We continue to urge the Government of the Sudan to make good on its commitments in the July 2011 Doha Document for Peace in Darfur in order to make local justice and accountability mechanisms a reality, including by empowering its special prosecutor for crimes in Darfur, establishing special courts for Darfur and inviting observers from the African Union and the

United Nations to monitor the proceedings of those courts.

In conclusion, we would like to reiterate our thanks to Prosecutor Moreno-Ocampo and his Office for the work they have done to advance the cause of justice for the people of Darfur. We call on the members of the Security Council and the international community to take concrete steps to ensure that justice in the Sudan is indeed served and that the cycle of violence and impunity there comes at last to a close.

Mr. Mashabane (South Africa): We would like to take this opportunity to congratulate you, Sir, on assuming the presidency of the Security Council for the month of June, and would equally like to express our sincere gratitude to the delegation of Azerbaijan for the manner in which it steered the work of the Council in May.

Let me offer our sincere gratitude to Mr. Luis Moreno-Ocampo for his progress reports. As this is his final report to the Council, I would also like to join others in expressing my delegation's appreciation for his tireless efforts over the past nine years. I wish him well in his future endeavours. Allow me also to congratulate Ms. Fatou Bensouda, who will soon take over the hot seat of the Prosecutor of the International Criminal Court (ICC). I am confident that she will lead the fight against impunity with fearlessness and integrity.

As a State party to the ICC, South Africa is fully committed to all the objectives of the Rome Statute system, particularly the dual purpose of fighting impunity while promoting the preservation of peace, security and the well-being of the world. We are convinced that, when all is said and done, those who have committed international crimes must be held accountable. We are also very much aware that the victims on whose behalf all our actions are taken will find little comfort if we do not do all that is politically feasible to facilitate an end to the conflict. It is only by ending that conflict that the people of Darfur will find security and be able to live in dignity. With that in mind, we believe that the Council should utilize the Court as a tool to promote political dialogue in the search for peace and justice in Darfur, and indeed in the whole of the Sudan. The efforts of the African Union (AU) in particular should be supported.

We have taken note of the decision of the Pre-Trial Chamber to issue an arrest warrant against Abdelrahim Mohamed Hussein, Minister of Defence of the Government of the Sudan, on 51 counts of crimes against humanity and war crimes. We note that this has resulted in an increase in the number of outstanding warrants. We have also noted the decision of the Pre-Trial Chamber on 13 December 2011 concerning the non-cooperation of two African States in relation to the President of the Sudan. In that connection, we have had the opportunity to study an AU communiqué of 14 December 2011 on the Pre-Trial Chamber's decision that raises a number of legal questions.

South Africa remains very concerned about the report's allegations about continuing genocide, aerial bombardments, attacks on civilians, sexual and gender-based crimes and the recruitment of child soldiers. Such allegations serve to strengthen our resolve that a political solution to ending the violence must be found as a matter of urgency. South Africa has always advocated a two-track approach to the Darfur situation, one that recognizes not only a judicial track, aimed at ensuring accountability and justice for crimes committed, but also a political track, designed to find lasting peace.

Our search for that peace is inspired by the desire to ensure that the crimes that have been committed and are allegedly still being committed cease, and that the people of Darfur can find security and be able to live in a dignified way. In our search for justice and accountability, that political track should be kept constantly in mind. It is, after all, for the victims that we are expending all these efforts. Relieving their plight should therefore be at the forefront of our concerns.

The Council, as the organ with primary responsibility for the maintenance of international peace and security, should utilize all the tools at its disposal for promoting political dialogue in the search for a comprehensive solution to the conflict in Darfur. It is only through a comprehensive political solution that peace will be found. In that regard, the Council should support the framework for facilitation by the AU and United Nations of the Darfur peace process. The framework represents a key initiative aimed at addressing the pertinent issues of supporting the Doha Document for Peace in Darfur and bringing non-signatory participants to the negotiating table in order to promote a cessation of hostilities. Furthermore, it addresses the importance of supporting internal dialogue and consultation among Darfuris.

By the same token, efforts towards peace cannot ignore the requirements for justice. We therefore call for implementation of the recommendations of the

AU High-level Implementation Panel on Darfur, and particularly of the methods for ensuring accountability that they contain. It is important that the Council take a strategic approach in dealing with the challenges faced by the Sudan, as we believe that will advance the cause of long-term peace and justice there.

We understand the Prosecutor's frustration at the number of arrest warrants issued against indictees that have gone unenforced. Nonetheless, we wish to warn against the possibility referred to in the Prosecutor's report of using the African Union-United Nations Hybrid Operation in Darfur (UNAMID) as an enforcement tool for effecting ICC arrest warrants. Not only would that be inconsistent with UNAMID's mandate, it would also have a negative effect on UNAMID's credibility and threaten its important peace-related objectives, including the promotion of a peace agreement. While the report purports not to suggest that as an option, the mere mention of the possibility is cause for concern to us. The report does not mention the possibility of asking Member States or regional organizations to execute arrest warrants. In the current state of affairs, the ICC States parties have an obligation under the Statute to cooperate, while the Government of the Sudan has an obligation to comply under resolution 1593 (2005). Owing to the limited scope of that resolution, no other State is obliged to cooperate with the ICC in relation to the situation in Darfur. We note that the limited scope of the duty to cooperate, as laid out in resolution 1593 (2005), was specifically designed in order to accommodate the interests of some permanent members of the Council that have misgivings about the ICC. The Council is therefore unlikely to adopt a resolution requiring all Member States to cooperate in the enforcement of arrest warrants.

Moreover, given that regional organizations are not party to either the United Nations Charter or the ICC Statute, it is difficult for us to conceive the legal possibility of obliging regional organizations to enforce arrest warrants issued by the ICC. If by regional organization the Office of the Prosecutor is suggesting that regional security arrangements be activated to effect the arrest of persons under arrest warrants, my delegation would view such a process as a dangerous proposal that could add fuel to an already volatile situation.

Let me conclude by recalling that our overall objective should be to alleviate the hardship of the men, women and children engulfed by violence in the Sudan. It would be a travesty if our actions resulted in the worsening of conditions for the people in Darfur.

Mr. Briens (France) (*spoke in French*): I would first of all like to thank Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his report. Since 2005, he has briefed the Council in a transparent way on the judicial work carried out by his Office and the Court. As he steps down on 18 June, I would like to take this opportunity to extend to him France's gratitude for his outstanding commitment to the fight against impunity, in particular in Darfur. I also congratulate Ms. Fatou Bensouda on her election to the office of Prosecutor. We have every confidence that, under her stewardship, the International Criminal Court will continue its work with the same independence and impartiality.

First of all, a reminder — it was the Council that referred the situation in Darfur to the International Criminal Court through a resolution under Chapter VII of the United Nations Charter. The International Criminal Court did not take it on by itself. It was the Council that decided that the Sudan and other States Members of the United Nations should cooperate with the International Criminal Court on the case.

The Council did that for two reasons. The first reason was the extent of the crimes committed in Darfur, some of which were crimes against humanity and crimes of genocide. The second reason was because the Council gives still greater importance to responsibility for crimes committed and the fight against impunity.

Returning to the report, in it the Prosecutor recalls that four people indicted for war crimes and crimes against humanity, one of whom is accused of genocide, continue openly and publicly to evade the Court despite the arrest warrants issued against them by the International Criminal Court. President Al-Bashir, former militia commander Mr. Kushayb, Minister of Defence Mr. Hussein and the current Governor of Southern Kordofan, Mr. Haroun, are free. Sought for the massacre of thousands of civilians or accused of having carried out genocide, they retain key offices and are in a position to order new killings.

As the report underscores, impunity encourages them to continue the same methods in Southern Kordofan, where a serious humanitarian crisis is taking place behind closed doors. Despite the Government's efforts to ban observers, everyone is well aware of the aerial bombings, the lack of basic health care, the

arbitrary arrests, the gender-based violence and the blocking of humanitarian aid amid widespread famine. Just because the Sudanese authorities are doing their utmost to conceal that situation does not mean that we should allow ourselves to be deceived and to ignore our responsibilities. International justice must run its course, show that the threat against the perpetrators of crimes is not in vain, and deter others from taking the same path.

In order to justify the failure to execute arrest warrants, some people have invoked the primary role of the Sudanese national jurisdiction. Moreover, the Prosecutor, Mr. Moreno-Ocampo, since taking oath, has always demonstrated his attention to the primary role of national jurisdictions in the situations before the ICC. He has reviewed the work of all special jurisdictions established in the Sudan since the 2005. The conclusion is nothing. They have done nothing, and they cannot do anything since all perpetrators of the crimes enjoy complete immunity. That also, I recall, is President Mbeki's conclusion in the report of the African Union High-Level Implementation Panel on the Sudan (see S/2011/816).

Today, only the case against the leaders of rebel groups, Mr. Abdallah Banda and Mr. Saleh Jerbo, the perpetrators of the attack on the African Union base in Haskanita, is under way. They gave themselves up voluntarily and have agreed to suffer the consequences of their crimes.

As the Prosecutor's report points out, the international community's inability to bring to trial the four indictees is a challenge to the authority of the Security Council, which, with the adoption of resolution 1593 (2005), demanded that justice for the crimes committed in Darfur be done. The obligation to cooperate decided by the Council has not been respected. As a result, the Prosecutor has called on the Council to undertake fresh consideration, including by asking Member States to prepare for arrest operations. That is nothing new. That has already been done for the International Criminal Tribunals for the Former Yugoslavia and for Rwanda.

As the Prosecutor proposes, the Council could effectively consider new legal or operational measures so as to ensure that its resolutions are implemented. The Council, as well as the States parties to the Rome Statute, must demonstrate consistency. They cannot host on their territory an individual under an ICC arrest warrant without moving towards his arrest. Let us recall that such a duty to cooperate derives not only from the Rome Statute, but also from resolution 1593 (2005).

Mr. Cabral (Portugal): Allow me first of all to thank Ambassador Agshin Mehdiyev of Azerbaijan and his team for the efficient presidency for the month of May. I also take this opportunity to convey to you, Mr. President, the full support of my delegation for your presidency for this month.

I wish to thank Mr. Moreno-Ocampo for his participation here today, as well as for his report on the situation in Darfur pursuant to resolution 1593 (2005). As mentioned in the report, the cases of genocide, crimes against humanity and war crimes presented to the International Criminal Court (ICC) illustrate the worst incidents that occurred within Darfur.

As we consider the fifteenth report, however, we continue to see, with real concern, that the same obstacles and difficulties reported in previous reports still persist. Arrest warrants issued by the Court in two of the three cases have still not been executed. Only in the third case does justice seem to be under way, since the trial of Mr. Banda and Mr. Jerbo, alleged commanders of the rebel forces, is planned to start in July, following the recent confirmation of charges by the Court.

Also, on the domestic front, no significant efforts appear to have been undertaken to investigate crimes that come under the ICC's jurisdiction. As highlighted in the report, after more than seven years of instituting several judicial mechanisms, the Sudan has conducted no credible national proceedings relevant to those crimes. That is despite the concerns clearly expressed by the African Union High-Level Implementation Panel regarding the lack of political will and the persistent obstacles to domestic investigation and prosecution.

Moreover, the dire humanitarian situation on the ground persists following the expulsion of humanitarian organizations ordered by the Government. As reported, there are fewer institutions now helping the victims of rape because of the expulsion, or threat of expulsion, of organizations working in the area of sexual violence. However, as stressed in the latest report to the Council of the Special Representative of the Secretary-General on Sexual Violence in Conflict (S/2012/33), today such types of crimes continue to be perpetrated and unpunished, as do other crimes of the same pattern identified by the ICC judges, as recent reports of the Secretary-General unfortunately testify.

With its independent judicial nature, the ICC remains unique as a tool in conflict prevention, as well as in ensuring both justice and peace in the region. To achieve those goals, the international community, on behalf of which the Security Council referred the case to the ICC, has a strong interest in ensuring that the Court plays its role fully. Cooperation is therefore essential. Without the cooperation of all Member States, the Court cannot fulfil that role.

However, we are concerned about the continuous lack of cooperation displayed by the Sudanese authorities on outstanding arrest warrants. We again stress the need for all States to strengthen cooperation with the Court in order to enforce those warrants.

Finally, we would like to thank the Prosecutor, Mr. Moreno-Ocampo, for his efforts during his tenure at the head of the Office of the Prosecutor. We also want to thank him for the role he has played in strengthening the Court and in promoting a better understanding of the Court's potential, thus enhancing the awareness by the international community of the Court's indispensable contribution to the maintenance of peace and security.

Mr. Osorio (Colombia) (*spoke in Spanish*): At the outset, I would like to express my congratulations to you, Sir, and your entire delegation on assuming the presidency of the Council for the month of June. The experience of your previous presidencies tells us that we are in very good hands. I would also like to thank the Ambassador and delegation of Azerbaijan for the serious and calm way in which they conducted our work during the month of May.

I would like to welcome Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, to the Council Chamber. This may well be the last time that he addresses members of the Council in that capacity and with regard to the issue of Darfur. That is why I would like to reiterate something that I have said on various occasions, namely, that the positive outcome of the first decade of activities of the International Criminal Court is very closely related to the responsible, diligent and impartial manner in which Prosecutor Moreno-Ocampo has understood and carried out his functions as Chief Prosecutor of the International Criminal Court since the beginning. His successes in leading that Office have contributed to implementing the principle of individual criminal responsibility for the most serious crimes of undoubted significance to the international community as a whole.

We know that under the Rome Statute of the International Criminal Court the Court may only deal with atrocious crimes that have been designated to be international crimes and may only intervene when the Court has ascertained that the domestic judicial authorities are not in a position or do not have the intention to carry out the prosecutions themselves. That is exactly the situation that we see today when we acknowledge the unavoidable fact that the criminal proceedings begun by the Office of the Prosecutor, at the express request of the Council, against four indictees have not been implemented because those people have not been handed over to the Court. We are referring here to the acts of genocide, the crimes against humanity and the war crimes that were committed in Darfur during the period indicated in resolution 1593 (2005) and which clearly correspond to the level of seriousness required by the Rome Statute.

After an arduous investigation and careful evaluation of the evidence, a chamber of the Court concluded that there was sufficient basis to proceed with the prosecution of the persons who bear the greatest responsibility for the commission of such crimes. The situation is also one in which the Office of the Prosecutor, after weighing all of the pertinent information, has arrived at the conclusion that, at this point in time, there are no credible criminal proceedings in the Sudan that could call into question the admissibility of the grounds adduced, nor is there any other form of objection that could be raised to the jurisdiction of the Court in this matter.

On the contrary, according to the report of the Prosecutor, a deliberate policy has been adopted to hide those crimes, grant effective immunity to those who have been accused by the Court and distract the attention of the international community. That situation has opened the way for the Court to assume jurisdiction based on the principle of complementarity.

One of the declared purposes of the Rome Statute and for the creation of the International Criminal Court is to provide a disincentive to potential perpetrators of horrendous crimes in the context of generalized violence or armed conflict. The importance of the creation of the Court lies not only in the specific prosecutions it carried out but also in the very strong message it sends out to deter those who are in positions of leadership or Government throughout the world and to warn them that atrocities, which in the past have moved the conscious of the international community, such as ethnic cleansing or genocide, will not go unpunished and that the United

Nations and its Member States will spare no effort to bring those responsible for such crimes to justice.

In that framework, we are sorry to see that, although at the end of its first decade of operation the overall assessment of the Court is positive, when it comes to Darfur, international justice has not been served. The arrest warrants against those accused have not been carried out and the judicial and extrajudicial proceedings cannot, therefore, move forward.

In its historic resolution 1593 (2005), the Security Council, after determining that the situation in the Sudan continued to represent a threat to international peace and security, specifically invoked Chapter VII of the Charter and decided to refer the situation in Darfur to the Court and, furthermore, decided,

> "that the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution". (resolution 1593 (2005), para. 2)

In the opinion of my delegation, the obligation to cooperate with the Court certainly includes a positive and unavoidable duty to carry out the arrest warrants issued on a regular basis by the Office of the Prosecutor. To do otherwise, demonstrates an ignorance of the mandatory nature of the decisions adopted by the Council under Chapter VII of the Charter and of the Charter itself.

Mr. Tarar (Pakistan): On behalf of the Pakistan delegation, I would like to congratulate you, Sir, on China's assumption of the presidency of the Security Council for June. Let me also express our appreciation for the able manner in which Azerbaijan led the Council's work last month. We would like to acknowledge the presence of the Prosecutor of the International Criminal Court (ICC), Mr. Luis Moreno-Ocampo, in the Council today. We take note of his briefing as well as of his fifteenth report submitted pursuant to resolution 1593 (2005).

Objectivity, not politicization, should guide these reports and briefings. Let me state at the outset that Pakistan, like about half of the current membership of the Council, including three permanent members, is not a State party to the Rome Statute establishing the ICC. Nevertheless, we acknowledge the rights and obligations of the States parties to the ICC.

The Sudan is an important country in the African continent. Durable peace and stability in the Sudan is not only a desire of the Sudanese people but also an imperative for regional peace and security. Achieving that objective requires serious and genuine support and the understanding of the international community. The situation in Darfur in the Sudan, in particular the unfortunate suffering of the people, has been a matter of concern for several years now. We must do more to help resolve this complex problem in a holistic manner and to bring an end to the pain and agony of the population.

Addressing the situation in Darfur is also integral to the efforts for a comprehensive peace in the Sudan, an objective that Pakistan supports. The international community and the Council have recognized that comprehensive peace entails progress on multiple tracks, notably a political process aimed at promoting a peaceful solution through dialogue, justice and reconciliation, efforts to improve security, and addressing the human rights and humanitarian aspects. It is in that regard that we reiterate our support for the efforts of the United Nations, as well as the African Union, particularly its High-level Implementation Panel, towards achieving peace, stability, justice and reconciliation in Darfur.

We believe the search for justice in Darfur should be pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace in the region. In that context, the positions of the African Union, the League of Arab States and the Organization of Islamic Cooperation should also be duly considered.

Pakistan firmly believes in the obligation of all States to guarantee and protect the right to life of all their citizens. Having the primary responsibility, the Government of the Sudan must take all measures to investigate human rights violations in Darfur and bring to justice their perpetrators.

We take note of the steps of the Government of the Sudan towards the implementation of the Doha Document for Peace in Darfur and welcome the establishment of the Darfur Regional Authority, as well as the National Human Rights Commission.

It is also imperative for all signatory parties to Doha Document for Peace to implement their commitments under the Document for lasting peace and stability in Darfur. On its part, the United Nations-African Union Hybrid Operation in Darfur (UNAMID) has an important role in the maintenance of peace and security in Darfur, particularly with regard to facilitating the political process in Darfur. Pakistan underscores the need for the full implementation of the UNAMID mandate.

Let me conclude by reiterating that the overall objective of the international community and the Council is the attainment of durable peace and stability in the Sudan. We should harmonize and consolidate our efforts for the early achievement of that objective.

Mr. Rosenthal (Guatemala) (*spoke in Spanish*): As this is our first intervention under your presidency of the Security Council, Sir, allow me to wish you every success in your efforts. You can count on our support and full confidence that with your wisdom, you will conduct our work successfully. I would also like to thank Ambassador Agshin Mehdiyev for his excellent presidency during the month of May.

We thank Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his briefing and for the report presented to the Council. As this is the last report that he will present in his capacity as Prosecutor, we would like to take this opportunity to express to him our deepest gratitude for his exceptional performance and professionalism at the Court. We would have still done so without having been a State party to the Court. However, now that we have finally completed all the steps necessary to deposit our accession to the Rome Statue, barely two months ago, we do this with an even greater sense of ownership. Likewise, we wish the Prosecutor every success in his future endeavours.

As set out in paragraph 2 of resolution 1593 (2005), the Government of the Sudan and all other parties to the conflict in Darfur shall cooperate to assist the Court and the Prosecutor in their activities. On that legally binding basis, investigations and activities related to the investigations of war crimes, crimes against humanity and genocide are being carried out, in accordance with the scope of the Rome Statue.

We understand the extreme sensitivity that those investigations represent for the Government of the Sudan. However, from our perspective, there continue to be enormous shortcomings related to the lack of cooperation of the Sudanese Government with the International Criminal Court with regard to investigating the cases under its jurisdiction. The absence of internal processes of the special courts created in 2005 and the failure of the Government of the Sudan to implement the resolutions that have been adopted by the Council, above all the most recent resolutions, including resolution 2035 (2012), in our view reflect the ongoing obstacles to guaranteeing effective accountability with regard to the crimes committed since 2003.

We view with concern that the judicial investigations mentioned in the Prosecutor's report have shown that there have been specific orders to attack civilians, including aerial bombardments and the deliberate maintenance of conditions hostile to the living conditions of the displaced population, which will lead to severe damage in the long term. The information presented with respect to the constant restrictions standing in the way of the distribution of humanitarian assistance and to alleviating the suffering of the vulnerable population is something that we fail to understand.

It is in that same context that, as members of the Council and from our national perspective as a State party to the Court, we cannot turn a blind eye to the suffering caused to the population and the serious acts committed in Darfur since 2003, as well as to the recent investigations that detail systematic and lamentable facts, which by any measure constitute crimes against humanity.

While I underscore that we understand the complexity involved in bringing to justice those parties indicated in the Prosecutor's report as responsible for the crimes committed in Darfur, we believe that the evidence collected and the judicial investigations carried out adhere to the principles of impartiality, independence and non-interference in politics. If we accept the premise, and we do, that there can be no peace without justice, then the atrocities committed cannot remain unresolved.

As members of the Council, we are certain we will be able to resolve internal differences that may exist and, in that context, renew institutional cooperation between the International Criminal Court and the Security Council. Likewise, we recognize that efforts are being undertaken in the current peace process being implemented in Darfur, in particular the implementation of the Doha Document for Peace in Darfur and the establishment of institutions tasked with monitoring respect for human rights and the crimes committed in Darfur since 2003, all of which we think is commendable.

Mr. Menan (Togo) (*spoke in French*): At the outset, on behalf of the delegation of Togo, I would like to congratulate you, Mr. President, on China's assumption of the presidency of the Security Council for the month of June. I would also like to thank the delegation of Azerbaijan for its excellent work last month.

I should also like to thank Prosecutor Luis Moreno-Campo for his presentation of the report of

the International Criminal Court (ICC) pursuant to resolution 1593 (2005), as well as for the work he has done in keeping with that resolution.

The report provides an overview of the implementation of resolution 1593 (2005), notably in terms of the indictments against those suspected of crimes and serious human rights violations and the efforts to bring them before international justice or national tribunals as well as the cooperation of the Court with the Sudanese Government and the other States Members of the United Nations.

On all those matters, the Prosecutor's report indicates that no progress has been made and that the Sudanese authorities have not expressed their willingness to work towards the implementation of the resolution. The establishment of special courts in Darfur and the appointment of a number of prosecutors were signs that were positive and welcome, but that came to nothing, because, as the report makes clear, neither the courts nor the prosecutors fulfilled their duties. The Togolese delegation hopes, therefore, that the demands of the relevant Security Council resolutions as well as the calls from other bodies, including the African Union High-level Implementation Panel, will spur the Sudanese authorities to take national steps to administer justice and cooperate with the Court.

Togo believes that the conflict in Darfur will never come to a conclusive end unless the fight against impunity prevails and those who have been indicted answer for their crimes according to the norms of international law. Political will on the part of the highest Sudanese authorities to put an end to impunity remains the key to a lasting solution to the conflict in Darfur. We reiterate that no conflict is resolved nor genuine reconciliation achieved unless impunity ends and perpetrators are tried in courts of law. Nor can the ICC deliver justice without receiving cooperation from States, whose discretionary right to pursue perpetrators on their own initiative should encourage them to take independent measures, so as to avoid any foreign intervention.

While it is clear that violence in Darfur has greatly diminished, the conflict is not over and the humanitarian situation is still worrying. Barriers to humanitarian efforts, the expulsion of some non-governmental organizations and restrictions on the delivery of medicine and supplies to outlying regions must stop, in compliance with resolution 1556 (2004). The Sudanese Government should also fully implement resolution 2035 (2012), of 17 February, on the work of the Panel of Experts and the need to end all violations of human rights.

Through the Security Council, the United Nations has demonstrated its will to create conditions in Darfur conducive to peace and peaceful development, as evidenced in the recent renewal of the mandate of the African Union-United Nations Hybrid Operation in Darfur. My country welcomes the Operation's critical contribution to the protection of civilians, humanitarian assistance, intelligence and implementation of the ceasefire and security measures. The Council should remain engaged, so that its resolutions on the conflict in Darfur can be fully implemented. Non-compliance by internal or external actors will only perpetuate violence, violations of human rights and threats to peace and security.

Mr. Mehdiyev (Azerbaijan): At the outset, I would like to congratulate China on assuming the presidency of the Council for the month of June, and we wish Ambassador Li Baodong and his team much success in their work. Allow me also to thank Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his briefing and for presenting the fifteenth report of the Court to the Security Council pursuant to resolution 1593 (2005).

While Azerbaijan is not a signatory to the Rome Statute of the International Criminal Court, we do strongly believe that the protection of civilians and respect for international human rights and humanitarian law are among the responsibilities of the international community. All of those elements doubtlessly constitute important pillars of international accountability and carry their own weight. We note the efforts of the International Criminal Court to investigate all those who are responsible for crimes in Darfur.

It is also important to ensure that the ICC Prosecutor acts strictly within the mandate of resolution 1593 (2005). Effective measures for preventing serious human rights violations in the Sudan, including the establishment of a proper national judicial system, are indispensable for enforcing the rule of law in the country. In that sense, the international community's assistance to Sudan is much needed.

The implementation of the Doha Document for Peace in Darfur and an all-inclusive Darfur-based internal dialogue are of the utmost importance for bringing durable peace to the region. We welcome

the steps taken so far, especially the establishment of regional autonomy in Darfur and of the National Human Rights Commission, as well as the appointment of a prosecutor for a special court for Darfur, with jurisdiction to investigate all human rights violations committed since 2003.

We are concerned about the activities of non-State armed groups, which are the main obstacles to the peace process. In that respect, the recent news about clashes between the Sudanese army and rebel groups is deeply alarming. It is important that the non-signatory parties join the peace process without preconditions. We also deplore the criminality and banditry in Darfur, which are the most significant threats to civilians and humanitarian workers.

In conclusion, we note with approval some positive developments in the overall security environment in the region and we hope to see further improvements in that regard.

Mr. Karev (Russian Federation) (*spoke in Russian*): We are grateful to the Prosecutor of the International Criminal Court (ICC), Mr. Moreno-Ocampo, for his fifteenth report to the Security Council and for his briefing today. As he is the first ICC Prosecutor and he is preparing to step down, we would like to recognize Mr. Moreno-Ocampo's work in that post and to wish him every success in his future endeavours.

Russia supports the work of the ICC in ensuring the irreversibility of sanctions for the most grievous crimes that trouble the whole of the international community. We believe that in order to strengthen the authority of the ICC it is critical that ongoing investigations objectively assess foul play committed by all sides in any given situation, while avoiding politicization in the work of the Court.

Since the adoption by the Council of resolution 1593 (2005), almost seven years ago, the ICC has made significant progress in investigating Sudanese crimes — so much so that further progress is impossible without those indicted being tried in The Hague. Many attribute that state of affairs to the unsatisfactory level of cooperation on the part of States with the Court, especially the Sudan itself.

Of course, the situation requires analysis and a search for new approaches to the problem of combating impunity. However, we would like to stress that, in that context, invoking enforcement capacities under Chapter VII of the Charter with a view to carrying our arrest warrants for Sudanese officials is unlikely to solve problems arising for the ICC in the Sudan. We continue to closely track efforts to bring to justice those guilty of the attack on African Union peacekeepers in Haskanita. We note yet again that that 2007 attack was not the only episode of destructive acts by rebel groups that merit the attention of the Prosecutor.

Russia continues to believe that the administration of justice should take place within a general framework for a settlement to the problems in Darfur. In supporting the decision of the Security Council to refer the situation in Darfur to the ICC Prosecutor, in accordance with the Rome Statute, we continue to believe that work in that area should not stand in the way of the process of restoring peace and post-conflict normalization.

Mr. Wittig (Germany): As this is the first time that I take the floor in the Security Council this month, let me express our congratulations to you, Mr. President, for your delegation's assumption of the presidency of the Council for the month of June. We trust, Sir, that you will guide us with your wisdom through all the challenges presented by what looks like a very busy month. You can count on Germany's support.

At the same time, I would like to warmly commend and thank our colleague from Azerbaijan, Ambassador Mehdiyev, for his very effective stewardship of the Council in the month of May.

Since this is the last time that Prosecutor Luis Moreno-Ocampo is addressing the Council, I would like to start by thanking him, not only for his report and statement today, but for his many years of hard work, dedication and commitment to international justice. His contribution has been instrumental in the efforts undertaken by the International Criminal Court (ICC) to bring to justice perpetrators of atrocities committed in various parts of the world. We are of course very grateful to him for the work he has done in following up on resolutions 1593 (2005) and 1970 (2011), which referred the situations of Darfur and Libya, respectively, to the ICC. As he leaves his present functions, we wish him all the best for the future.

We noted the arrest warrant issued against Mr. Abdelrahim Mohamed Hussein, the current Sudanese Minister for Defence, on 1 March, and we understand the deep sense of frustration expressed in the Prosecutor's report before us. Ahmed Haroun, indicted for war crimes and crimes against humanity, is Governor of Southern

Kordofan state; Ali Kushayb, indicted for war crimes and crimes against humanity, is at large in the Sudan; and President Omer Hassan Al-Bashir, indicted for war crimes, crimes against humanity and genocide, has been re-elected and defies the authority of the Council. Unfortunately, some of the indictees continue to incite Government forces to commit atrocities in defiance of Security Council resolutions, most recently resolution 2035 (2012), of 17 February 2012. In short, unlike the case of Libya, open conflict, and therefore impunity, continues to characterize the situation in the Sudan.

In the light of that deplorable situation, I would like to reiterate that it is the prime responsibility of the Government of the Sudan to comply with the Council's resolutions, cooperate with the Court and surrender indicted persons to the authority of the Court. As the Prosecutor's report makes clear, no such will to cooperate currently exists at the relevant levels of the Government of the Sudan.

However, that does not mean that justice will not be done at some point in time. Eventually, the Sudanese will have to decide what is ultimately best for them and their country. The recent sentencing of Charles Taylor by the Special Court for Sierra Leone to 50 years in prison is a clear sign that the age of accountability is neither a dream nor a mere concept, but is becoming a reality. We must not waver in our determination to foster that reality. Perpetrators of genocide, crimes against humanity and other serious crimes must not and cannot be allowed to avoid justice.

Notwithstanding the Sudan's primary responsibility to cooperate, we have taken full note of the Court's findings regarding the non-cooperation of countries when they have been visited by President Al-Bashir. The non-execution of Court requests severely affects its ability to fulfil its mandate. Germany therefore reiterates its call upon all State parties to the Rome Statute to fully honour their obligations under the Statute, in particular the obligation to cooperate with the Court and execute any warrant of arrest issued by it. We also support ongoing action by the ICC Assembly of States Parties to encourage full cooperation with the Court.

Mr. Hardeep Singh Puri (India): Let me begin by congratulating you, Mr. President, and the delegation of the People's Republic of China, on assuming the presidency of the Security Council for the month of June. We wish you success, Sir, and assure you of my delegation's full support and cooperation. I would also like to thank the Permanent Representative of Azerbaijan and his delegation for their successful stewardship of the Council during the month of May.

I also want to thank the Prosecutor, Mr. Luis Moreno-Ocampo, for his briefing today. We have taken note of his fifteenth report on the situation in the Sudan submitted pursuant to paragraph 8 of resolution 1593 (2005), of 31 March 2005.

India is neither a signatory to the Rome Statute nor a member of the International Criminal Court (ICC) for reasons that are well known. I will not reiterate them.

India strongly condemns all acts of violence committed against civilians. We believe that the right to life is one of the fundamental rights and the foundation of any social order. It is the obligation of all States to take appropriate measures to protect the lives of their citizens while maintaining social order. The States concerned must also bring to justice those responsible for violations of that right.

The continuing conflict in Darfur is one of serious concern. We support all efforts to bring the conflict to an end. We also support the activities of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) aimed at protecting civilians and the efforts made, in cooperation with the African Union's High-level Implementation Panel led by President Thabo Mbeki, to restore an enduring environment of peace and stability in Darfur. An inclusive political process to address the legitimate aspirations of all sectors of the Darfuri population will go a long way towards resolving the conflict.

All parties have to accept that there is no military solution to the conflict in Darfur. We call upon all parties to join the political process without preconditions and without any further delay. In that connection, it is necessary that the Council seriously consider measures against those who have so far refused to join the peace process.

It is also important that the proceedings at the ICC be undertaken in a manner consistent with its obligations and that they contribute to the efforts aimed at ending the conflict in Darfur. Any suggestion that has the effect of creating new obligations for States and regional organizations that are not parties to the Rome Statute will not be legally sound. Nor will such suggestions serve the purpose of peace in Darfur. As such, we cannot support them.

In conclusion, India will continue to support all diplomatic efforts for an early establishment of peace and security in Darfur that will afford all sectors of the Darfuri population opportunities for socio-economic development and peaceful coexistence through an inclusive political process.

The President (*spoke in Chinese*): I shall now make a statement in my capacity as the representative of China.

On the whole, the situation in Darfur, the Sudan, is now easing. There has been progress in the implementation of the Doha Document for Peace in Darfur. The international community should continue to support the parties in Darfur in fully implementing the Doha Document and in ensuring that the rebels there renounce violence and sign a peace agreement with the Sudanese Government on the basis of the Document.

China believes that the political process holds the key to an appropriate settlement of the question of Darfur. It is only through the realization of a lasting peace in Darfur by political means that the foundation can be truly laid for justice.

Our position on the question of the International Criminal Court remains unchanged. We hope that the efforts of the ICC on the issue of Darfur will facilitate the political settlement of the question of Darfur. We hope that the Security Council and the ICC will fully respect the views of the African Union and the Arab League on this question.

I now resume my functions as President of the Council.

I now give the floor to Mr. Luis Moreno-Ocampo to respond to the comments made and questions raised.

Mr. Moreno-Ocampo: With due respect for the Council and the Government of the Sudan, it is my duty as Prosecutor to inform the Council and to put on notice the Ambassador of the Sudan, Mr. Daffa-Alla Elhag Ali Osman, that in accordance with article 25 3(d) of the Rome Statute, his activities denying crimes in Darfur could be considered part of those crimes. The Office has an obligation to investigate anyone responsible for the commission of crimes. The Office will therefore investigate if Mr. Daffa-Alla Elhag Ali Osman's denial of the crimes committed could be considered a contribution to a group of perpetrators acting with a common purpose.

Since Nuremberg, it has been clear that obeying illegal orders is not a valid excuse for the commission of crimes. The Office will respect Mr. Osman's rights and invite him to present any exculpatory information, and it will check his intentions, including if he was aiming to further the criminal purposes of a group of perpetrators in Darfur. In that case, the Office will not hesitate to take appropriate action if the evidence leads to the conclusion that he is participating in the crimes.

The President (*spoke in Chinese*): I thank Mr. Moreno-Ocampo for his statement.

I give the floor to the representative of the Sudan.

Mr. Osman (Sudan) (*spoke in Arabic*): The statement made by the Prosecutor concerning the Permanent Representative of the Sudan is a violation of all political and diplomatic norms. It is a threat that should be rejected and that reflects his methods of work at the Court. I would even say that it is the statement of a terrorist who is trying to silence the voice of justice and that of a politician who does not recognize the political and diplomatic rules and norms that give us the right to defend ourselves and to make our voices heard by the Council, which is responsible for peace and security.

If he and his supporters have been touched by our strong words that have shaken his credibility and put in question his professionalism, then that is another issue that does not give him to right to once again use the Rome Statute to intimidate diplomatic personnel, whose duties and functions are stipulated in political and diplomatic rules. Such conduct should be rejected. To permit it would only undermine international legality, the work of the United Nations and all diplomatic norms.

Perhaps the Council has noticed that he is in an emotional state and is behaving emotionally as a result of what we stated regarding his conduct and his lack of credibility. That has prompted him, at this delicate juncture, to make a statement accusing the Permanent Representative of the Sudan of being behind the crimes committed in Darfur. That is the way in which he thinks, and that is the manner in which he has tackled all of these issues — in a totally illegal, immoral and illogical manner, to the extent of intimidation and terrorization.

I would have preferred to hear him respond to all of the arguments that I have put forward and the statements made by international personalities who have denied that ethnic cleansing has been committed in Darfur. Why did he not say at the time that he would also prosecute

President Obasanjo, Mr. Danforth and Judge Cassisi for having refuted allegations that ethnic cleansing had been committed?

I will stop here. I am confident that the Council's wisdom will guide it as concerns the manner in which he thinks and behaves.

The President (*spoke in Chinese*): There are no more names inscribed on the list of speakers. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 12.20 p.m.